

Remarks:

Applicant has studied the Office Action dated February 23, 2007, and has amended the claims to distinctively claim the subject matter of the invention. By virtue of this amendment, claims 1, 4, 6 and 8 have been amended. No new matter has been added. Support for the new claims and the amendments are found within the specification and the drawings. It is submitted that the application, as amended, is in condition for allowance. Reconsideration and reexamination are respectfully requested.

Claim Objections:

Objections to claims 1-3 and 8 are now overcome, as the claims have been amended to correct typographical errors noted by the Examiner.

112 Rejection:

Claims 1-5 are rejected under 35 U.S.C. §112, first paragraph for failing to comply with the written description requirements and also as indefinite.

More particularly, the Examiner contends that the specification page 10 par. 37 does not mention the recited language related to “copying the downloaded system software from the home server to the home appliance.” The Examiner is reminded that §112, first paragraph, requires for the specification to adequately support the subject matter claimed rather than mirroring the claim language word for word. MPEP 2163, *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003); *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116.

Support can be provided “in a variety of ways” and “using such descriptive means as words, structures, figures, diagrams, and formulas” to “show that the applicant was in possession of the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). See, e.g., *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 68, 119 S.Ct. 304, 312, 48 USPQ2d 1641, 1647 (1998) (emphasis added).

Further, claim limitations may be supported in the specification through “express, implicit, or inherent disclosure.” See *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971). Referring to the specification paragraphs 35-37 of the present application provide:

[0035] “First, the home server 230 reads a system software version of the home appliance to be upgraded among the home appliances 240 (S300). Simultaneously, the home server 230 reads the latest system software version corresponding to the home appliance 240 from the appliance company server 200 (S310). It is preferable that the reading operation of the home server 230 is performed at predetermined intervals.

[0036] Then, the home server 230 compares the readout system software versions (S320). If the system software version of the corresponding home appliance 240 in the appliance company server 200 is newer than the system software version of the home appliance 240 in the home network 220 as a result of comparison, the home server 230 downloads the system software of the corresponding home appliance from the appliance company server (S330).

[0037] The home server 230 then replaces the system software of the home appliance 240 at home with the downloaded system software through the home network 220 (S340). Through the above-described process, the upgrade of the system software of the home appliance 240 is completed.”

A reasonable person having the benefit of reviewing the above paragraphs and the entire disclosure would clearly find that the applicant at the time of filing of the application was in possession of (and disclosed both explicitly and implicitly) the claimed features related to “copying the downloaded system software from the home server to the home appliance.”

Contrary to the Examiner’s understanding, section §112, first paragraph does not require a word-for-word matching between the language in the specification and the language recited in the claims. If one were to interpret §112, first paragraph, according to the

Examiner's understanding, then the claim language would have to be limited to *identical* language used in the specification and nothing more.

Referring to MPEP 2163 (II) (A), "[t]he examiner has the initial burden, after a thorough reading and evaluation of the content of the application, of presenting evidence or reasons why a person skilled in the art would not recognize that the written description of the invention provides support for the claims. There is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed, *Wertheim*, 541 F.2d at 262, 191 USPQ at 96."

The application as filed supports the rejected claim language. The figures also provide the details of a mobile communication terminal and the nature of its use. Therefore, a person of ordinary skill in the art, reviewing the specification and the drawings, no doubt, would understand that the downloaded system software can be stored on the home server and then copied over to the home appliance in order to replace the the older version of the system software.

Respectfully, the Examiner has misinterpreted the requirements of §112 in rejecting the claims. Pursuant to MPEP §2163 (II) (A) and §2163.04, the Examiner is requested to present "evidence or reasoning to explain why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims,"¹ or otherwise withdraw the rejection.

102 Rejection:

Claims 1-3 and 4-7 are rejected under 102 as anticipated by US 5,951,639 (MacInnis) and US 2002/0012347 (Fitzpatrick), respectively.

¹ MPEP § 2163.04 "If applicant ... points out where and/or how the originally filed disclosure supports the amendment(s), and the examiner finds that the disclosure does not reasonably convey that the inventor had possession of the subject matter of the amendment at the time of the filing of the application, the examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims.").

Independent claims 1, 4, 6 and 8 have been amended to more particularly claim the subject matter of the invention as it applies to a local server connected to a plurality of appliances in a home, such that new software code for each appliance is downloaded from a remote server to the local server and then stored on one or more of the plurality of appliances. The remote server thus in effect acts as a conduit between the home appliance and a remote server to control and select the downloaded content. As such, without the remote server each appliance cannot either directly or indirectly download the new software code.

MacInnis is directed to a method for broadcasting programming information to a group of home communication terminals (HTC) in a cable television network. Each HTC is directly connected to a remote source so that the remote source can directly broadcast or multicast data to each HTC. Unlike the claimed invention, no local server is provided in MacInnis through which the claimed downloading and replacing processes can be centrally controlled for each of the plurality of HTC. As such, each HTC is individually responsible for monitoring the download process.

In contrast, as recited in amended claims 1, 4, 6 and 8, the present invention operates by way of a centralized local home server, which determines which one of the appliances connected to it in a local home network require a software update. Thus, MacInnis teaches away from the claimed invention by requiring that each HTC individually and independently perform that actions required to download the programming information from a remote server.

Referring to MacInnis, particularly col. 1, lns. 42-61, MacInnis further teaches away from the claimed invention by emphasizing that the disclosed system in MacInnis is designed to eliminate a “two-way” communication between the terminal and the remote server (headend). This teaching is in contradiction to the claimed invention which provides for a two-way (request-reply) communication between the home server and the appliance company server.

Since MacInnis teaches away from the claimed invention in claim 1, in several different aspects, it is respectfully submitted that it is not a proper reference. Further more, as discussed above, MacInnis fails to teach all the elements of the claimed invention such as a local server and other recited relationships between the home appliances and the remote server that result in download of the proper software code to the local network.

Therefore, amended claim 1 is patentably distinguishable from MacInnis and should be in condition for allowance. Claims 2-3 depending on claim 1 should be also in condition for allowance by the virtue of their dependence on an allowable base claim.

With respect to claims 4-7, the Examiner has cited Fitzpatrick. Fitzpatrick is related to downloading program code from a remote source directly to a set-top-box (STB). The STB is individually responsible for processing the downloaded information for a specific descriptor to determine whether the downloaded data is a match for the STB and should be installed (see par. [0059]).

Referring to the amended claims 4, 6 and 8, Fitzpatrick suffers from the same deficiencies as MacInnis in that it teaches away from the use of a central home server to request, download and process the information provided from the remote source. As such, Fitzpatrick also is not a proper 102 reference and also fails to teach every recited element in claims 4 and 6. Therefore, claims 4, 6 and 8 are patentably distinguishable from Fitzpatrick and should be in condition for allowance.

Claims 5, 7 are dependent on claims 4 and 6 respectively and should be therefore in condition for allowance as well. Claim 8 substantially incorporates the elements of independent claims 4 or 6 and should therefore be in condition for allowance as well.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles,

California, telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

Lee, Hong, Degerman, Kang & Schmadeka

Date: May 23, 2007

By:

A handwritten signature in cursive script, appearing to read "Lew Macapagal", written over a horizontal line.

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